Supreme Court U.S.
FILED
OCT 4 2002
OFFICE OF THE CLERK

No. 02-177

IN THE

Supreme Court of the United States

JAMES R. ALDRIDGE, SR., *et al.*,

Petitioners,

v.

THE GOODYEAR TIRE & RUBBER COMPANY, INCORPORATED, an Ohio Corporation,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Where Petitioners were accorded full access to the voluminous discovery record adduced in prior related cases of other workers at the same plant asserting similar claims against Respondent, did the district court abuse its discretion in finding that Petitioners had failed to meet their burden of demonstrating that they need additional discovery under Fed. R. Civ. P. 56(f) to defeat Goodyear's motion for summary judgment?

2. Where Goodyear made factually accurate and legally proper arguments in support of its motion for summary judgment, did the district court and the court of appeals abuse their discretion in failing to accept Petitioners' wholly unfounded (and much belated) claims that these arguments constituted a "fraud on the court"?

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Respondent, The Goodyear Tire & Rubber Company ("Goodyear"), is a publicly held corporation. It has no parent corporation. Two entities, which might be publicly held or which might contain publicly held companies, report that they beneficially own 10% or more of its stock: (1) Brandes Investment Partners, L.P. and related parties; and (2) AXA, The Mutuelles AXA (as a group), AXA Financial, Inc., Alliance Capital Management L.P., and related companies.

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REASONS WHY THE PETITION SHOULD BE DENIED[1]

Respondent, The Goodyear Tire & Rubber Company, Incorporated ("Goodyear"), respectfully requests that this Court deny the petition for a writ of certiorari filed by Petitioners James R. Aldridge, et al., seeking review of the Fourth Circuit's unreported per curiam opinion set forth at Pet. App. 6-8. The petition should be denied for numerous reasons:

1. Petitioners mischaracterize the question that was decided by the Fourth Circuit and the district court, *i.e.*, whether Petitioners had satisfied their burden of identifying additional information necessary to help them defeat summary judgment pursuant to Fed. R. Civ. P. 56(f), and instead claim, erroneously, that they received no discovery.

2. Petitioners similarly mischaracterize the record adduced below in an effort to make it appear that they were denied discovery in a so-called "travesty of justice" (Pet. at 14) when in fact they were afforded voluminous discovery from prior related cases and failed to demonstrate, pursuant to Rule 56(f), why that discovery was insufficient.

3. Petitioners fail to demonstrate any conflict between the circuits or any other decisional chaos caused by the Fourth Circuit decision that requires this Court's review.

4. Petitioners continue to advance a preposterous and offensive charge of fraud on the court that was dismissed out of hand by the very courts that were supposedly defrauded.

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1. The Petition accurately describes the parties to the case, the jurisdiction of this Court, and the text of applicable Federal Rules of Procedure. It does not, however, accurately describe the opinions below, and these and additional misstatements in the Statement of the Case are discussed below.

5. Petitioners mischaracterize the tortured procedural history of this case, making it appear as if they were denied any opportunity to defeat summary judgment, when in fact the lower courts went out of their way to give Petitioners every opportunity to establish a basis for defeating Goodyear's motion for summary judgment.

When the actual questions decided by the Fourth Circuit are considered and the full facts of the record are examined, the inevitable conclusion is that this case presents a routine application of well-developed principles of law, none of which merits review by this Court. Contrary to the Petitioners' insistence that a "travesty of justice" occurred, this is a wholly unremarkable case in which the Petitioners had ample opportunity to make their case but simply failed to do so.

RESPONSE TO STATEMENT OF THE CASE

Because Petitioners' Statement of the Case thoroughly bludgeons the facts and procedural history of these consolidated cases, asserting numerous incorrect facts without any citation to the record below, Goodyear sets forth the following response.

A. The Kelly-Springfield Toxic Tort Cases.

Petitioners constitute the last group of former workers (or their representatives) at the long-closed Kelly-Springfield Tire Co. ("Kelly") tire manufacturing plant in Cumberland, Md., to sue Kelly's parent company, Goodyear, for tort damages. The workers were employed by Kelly, not Goodyear.[2] Two previous groups of Kelly employees sued Goodyear asserting similar occupational injuries (*e.g.*, cancer and heart disease) allegedly resulting from exposure to toxic substances in the Kelly plant, and failed.

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2. Each of the sixty-six Petitioners (or their decedents) filed a worker's compensation claim against Kelly that has been stayed pending the outcome of these cases.

The Kelly plant closed in 1987, seven years after the first group of 34 cases (known as the "*Heinrich*" group) was filed in the U.S. District Court for the District of Maryland. Sylvan H. Sack, Esq., co-counsel in these cases, also served as co-counsel in the *Heinrich* litigation with Martin Freeman, Esq. After the district court denied Goodyear's motion to dismiss, *see Heinrich v. Goodyear Tire & Rubber Co.*, 532 F. Supp. 1348 (D. Md. 1982),[3] the parties engaged in what the district court later described as "extensively litigated" discovery. *See Aldridge v. Goodyear Tire & Rubber Co.*, 34 F. Supp. 2d 1010, 1013 (D. Md. 1999) ("*Aldridge III*") (Pet. App. 44).

Plaintiffs' discovery in *Heinrich* was exhaustive. Counsel deposed twenty-eight of Goodyear's management and industrial hygiene personnel, including depositions of Goodyear's chemical engineers, industrial hygienists, toxicologists, chemists, research engineers, biotechnologists, compliance managers, and its medical director. *Id.* at 1020-21; JA.I 738-40.[4] Plaintiffs also deposed eleven Kelly officials, including Kelly's chief chemist, safety manager, facilities manager, plant physician, industrial nurse, industrial hygienist, director of purchasing, production manager, and compliance officer. (JA.I 740-41).

Kelly and Goodyear also produced "tens of thousands of documents" to the plaintiffs in *Heinrich*. (JA.II 1433-34). As the district court subsequently determined, those included

3. Petitioners' suggestion (Pet. at 4) that *Heinrich* established Goodyear's contractual liability under Restatement (Second) of Torts § 324A is ludicrous. The district court merely denied Goodyear's initial Rule 12(b)(6) motion to dismiss under the low notice pleading standard, which obviously had no bearing on subsequent summary judgment motions. *See Heinrich*, 532 F. Supp. at 1354.

4. "JA.1" refers to the original Joint Appendix filed by Petitioners in their second appeal to the Fourth Circuit, which Petitioners refiled in their third and final appeal, along with a second Joint Appendix ("JA.II") and other materials.

mortality studies, purchase order sheets, insurance company surveys, records disclosing yearly shipments of chemicals from Goodyear to Kelly, data disclosing every chemical used in the plant since 1936, and documents disclosing the exact location where each chemical was used and how each chemical was used in the manufacturing process. *Aldridge v. Goodyear Tire & Rubber Co.*, 198 F.R.D. 72, 78-79 (D. Md. 2000) ("*Aldridge V*"). Numerous other categories of documents were provided as well.

In 1986, after this extensive discovery but before motions for summary judgment had been filed, the thirty-four *Heinrich* cases settled. One year later, in 1987, twelve more Kelly employees (known as the "*McClelland*" group) filed suit against Goodyear in the U.S. District Court for the District of Maryland. Following 1½ years of additional discovery, the district court entered summary judgment in favor of Goodyear based primarily on a lack of proof of causation that any chemical supplied by, or conduct of, Goodyear caused any specific injury. *McClelland v. Goodyear Tire & Rubber Co.*, 735 F. Supp. 172, 174 (D. Md. 1990) ("*McClelland I*").[5]

A third group of five Kelly employees (known as the "*Jewell*" group, No. S-89-3285 (D. Md.)) brought suit against Goodyear in 1989. In recognition of the extensive discovery obtained by plaintiffs in *Heinrich* and the close similarity of the cases, the *Jewell* group of plaintiffs requested no additional discovery and adopted the briefs and evidence submitted by the *McClelland* plaintiffs without further supplementation. The *Jewell* cases were stayed in early 1990 pending resolution of the motion for summary judgment in *McClelland I*. Shortly

5. Specifically, the district court concluded that the workers could not "hold Goodyear responsible, under product liability theories, for the total 'toxic soup' they claim existed in their workplace" and that plaintiffs failed to "adduce[] evidence that would allow a reasonable fact-finder to conclude that it was more likely than not that any particular, identifiable negligent or intentional conduct by Goodyear (and not by [Kelly]) was the cause of any of the plaintiffs' particular illnesses." *Id.*

thereafter, summary judgment in favor of Goodyear was entered based on *McClelland I*, and the two groups of cases were consolidated for appeal, without opposition.

The Fourth Circuit subsequently affirmed the judgments in favor of Goodyear in both groups of cases. *McClelland v. Goodyear Tire & Rubber Co.*, Nos. 90-3087, 90-3090 to 90-3094, 929 F.2d 693 (Table), 1991 WL 38700 (4th Cir. March 25, 1991) ("*McClelland II*"). Like the district court, the Fourth Circuit agreed that plaintiffs had failed to adduce disputed material facts satisfying their burden of proof that Goodyear products or acts had caused their injuries.

B. The *Aldridge* Group of Cases.

Petitioners (known as the "*Aldridge*" group of 66 cases) constitute the fourth (and presumably final) group of Kelly employees to bring suit against Goodyear in the district court. Their claims echo those of their predecessors, claiming that Goodyear caused commonplace illnesses such as various types of cancers, heart disease, and lung disease. As the district court later found,

> [T]he material facts [in *Aldridge*] and in McClelland are virtually identical. The same claims have been asserted, and recoveries are being sought here for the same types of diseases. The tire workers in this case worked in the same locations, in the same plant, and during the same time periods as did those in *McClelland* and *Jewell*. Moreover, the same toxic chemicals are at issue here, and plaintiffs have alleged that they were exposed to those chemicals in the same manner as were the plaintiffs in *McClelland*.

(*Aldridge III*, Pet. App. 59).[6]

6. Petitioners' assertion (Pet. at 7) that the *Aldridge* amended complaints were new and dissimilar is wrong. In the Fourth Circuit, (Cont'd)

1. The *Aldridge I* and *II* decisions.

Forty three of the *Aldridge* cases were filed by Mr. Sack on January 16, 1990, only eight weeks after he and Mr. Freeman had filed the *Jewell* case and well *before* Judge Smalkin had entered summary judgment in *McClelland I*. They would have been consolidated with the *McClelland* and *Jewell* cases and disposed of by *McClelland I* but for a clever maneuver by Mr. Sack.

Upon learning that the 43 new cases had been filed, the district court inquired whether, like *Jewell*, these cases could adopt the pleadings and motion papers of the cases already pending. (JA.I 1298-1300). Although Mr. Sack acknowledged that the cases "were related, and essentially similar" (JA.I 1300), he declined the suggestion, stating, "[m]y cases are essentially asbestosis and other pulmonary disease while the other cases are essentially cancer." (JA.I 1300-02). After he was told that the *Aldridge* cases might be assigned to the asbestos pool of cases, Mr. Sack reversed course and wrote, "[t]he theory of liability relating to Goodyear's legal role as a defendant in the amended Complaints is common to all of them, and it is rooted in Judge Miller's decision" in *Heinrich*, and "[t]he nature of these cases and the issues raised do not fit into the Asbestos Section[.]" (JA.I 674-75).

Faced with counsel's conflicting characterizations of the cases, in June 1991 the district court transferred them to the MDL Asbestos Products Liability Litigation proceedings in the U.S. District Court for the Eastern District of Pennsylvania.

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Goodyear painstakingly documented how virtually every "new" allegation in the *Aldridge* amended complaints was in fact alleged by plaintiffs in the *McClelland* complaints or summary judgment proceedings. *See* Goodyear Br. in *Aldridge VI* at 45-56 & 46 n.21. Moreover, Goodyear expressly told the district court in *Aldridge III* about the one legitimately "new" claim in the amended complaints. (JA.I 732).

(JA.I 1303-04). But for this transfer, *Aldridge* would have been consolidated with *Jewell* and decided a decade ago per *McClelland I.*

After years of inactivity in the MDL proceedings, Petitioners obtained remand of the cases back to Maryland by arguing, in direct contrast to their earlier representations that these cases were asbestos cases, that "these are not traditional or strictly asbestos cases but rather regular product liability—negligence occupational disease litigation involving multiple diseases and multiple chemicals/substances." (JA.I 1305-07). *See also Aldridge III*, 34 F. Supp.2d at 1015 n.5. In July 1996, some six years after they had escaped consolidation with the other cases pending against Goodyear, the *Aldridge* cases were sent back to the district court in Maryland. *Id.* Thus, Mr. Sack's assertion that the *Aldridge* cases were asbestos cases was simply a maneuver to avoid the pending summary judgment motion in *McClelland I.*

Upon returning to Maryland from the six-year detour in Philadelphia, Goodyear moved for summary judgment. It argued that the claims were barred by the exclusive remedy provisions of Maryland workers' compensation law and that, based on the comprehensive discovery record adduced in *Heinrich* and *McClelland* regarding the Kelly plant operations and Goodyear's products, the plaintiffs were unable to establish causation.[7] The district court granted summary judgment to Goodyear on the workers' compensation ground, without reaching causation. *Aldridge v. Goodyear Tire & Rubber Co.*, No. 90-140 (D. Md. Mar. 5, 1997) ("*Aldridge I*") (JA.I 3540). Following that decision, however, the Court of Appeals of Maryland issued an

7. Contrary to their assertion here that they lacked sufficient discovery to respond to the motion for summary judgment, Petitioners filed twenty-one individual oppositions to Goodyear's motion for summary judgment in *Aldridge I* appending 2,146 pages of exhibits based on the discovery in *Heinrich* and *McClelland*. (JA.I 1387-1724, 1730-3539).

opinion in an unrelated case that decided the worker's compensation issue against Goodyear, and, by consent of the parties, the Fourth Circuit vacated the *Aldridge I* judgment. *Aldridge v. Goodyear Tire & Rubber Co.*, No. 97-1522, 145 F.3d 1323 (Table), 1998 WL 230966 (4th Cir. May 11, 1998) ("*Aldridge II*").

2. The *Aldridge III* decision.

Upon returning to the district court, Petitioners filed a new 299-page consolidated opposition to Goodyear's motion for summary judgment (supplementing the 21 individual oppositions that Petitioners had previously filed in *Aldridge I*, *see* n.7, *supra*) along with some 4,138 pages of exhibits. (JA.I 3554-7692). These included expert affidavits regarding causation filed pursuant to Fed. R. Civ. P. 56(e) and seven affidavits by counsel seeking discrete areas of additional discovery pursuant to Fed. R. Civ. P. 56(f). (JA.I 7670-90).

Based on this exhaustive briefing, the district court granted summary judgment in favor of Goodyear on the causation ground. *See Aldridge III*, Pet. App. 54-67. Regarding discovery, the district court concluded that no new further material information could be discovered from Goodyear about the long-closed Kelly plant that could cure Petitioners' experts' dual failures to prove causation and/or satisfy the standard set forth in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993). *See Aldridge III*, Pet. App. 67-72 (rejecting expert opinions as vague, conclusory, and not scientifically proven).[8] Like the

8. Petitioners' assertion that the district court wrongly considered these expert affidavits under Rule 56(e), not Rule 56(f), and thus erroneously applied *Daubert* to reject them on the merits, *see* Pet. at 9-10, is bizarre. Nowhere in the voluminous expert affidavits (J.A.I 3864-4728), or the Petitioners' 299-page opposition to summary judgment, or anywhere else in the record did Petitioners ever cite the expert affidavits in the context of Rule 56(f). To the contrary, on their face the (Cont'd)

McClelland plaintiffs before them, Petitioners (and their experts) had failed to meet their heavy burden of proving that any particular chemical, whether supplied by Goodyear or others, had caused any particular disease, as opposed to any other chemical or extrinsic cause (such as diet or smoking). *See id.* at 57-64, 65-67.

C. The *Aldridge IV* decision.

On appeal to the Fourth Circuit, Petitioners' counsel affirmed that the only additional discovery needed was set forth in Petitioners' Rule 56(f) affidavits. (App. Add. II 714-21).[9] Based on those representations, the Fourth Circuit reversed to allow Petitioners "*a limited opportunity* for discovery so that they may seek those documents and information, *and only those documents and information*, responsive to their requests that have not previously been disclosed in one or other of the litigations." *Aldridge v. Goodyear Tire & Rubber Co.*, 223 F.3d 263, 266 (4th Cir. 2000) ("*Aldridge IV*") (Pet. App. 38) (emphasis added).

The Fourth Circuit agreed with Goodyear, however, that Petitioners were not entitled to duplicative discovery that had already been produced in *Heinrich* or the subsequent actions.

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affidavits discuss experts' opinions regarding causation and the evidence in support – quintessential Rule 56(e) issues. (*Id.*). Indeed, Petitioners' Opposition to Summary Judgment explicitly argued (at pp. 39-40) that "Goodyear is not entitled to judgment as a matter of law on the issue of causation because, even without discovery, plaintiffs have evidence [i.e., the expert reports] that the exposures caused by Goodyear's acts, omissions, and/or identified products were substantial contributing causes of their injuries."

9. In addition to the Joint Appendices totaling many thousands of pages, Petitioners also filed voluminous supplemental addenda to their briefs in the Fourth Circuit ("App.Add.I" and "App.Add.II").

Moreover, the Fourth Circuit recognized that, upon reexamination of the Petitioners' Rule 56(f) assertions, the district court indeed might justifiably conclude that no further discovery is warranted: "It may well be that the district court was fully justified in denying further discovery altogether." (*Id.*).

The Fourth Circuit therefore emphasized that any new discovery, to the extent it is required, must be narrowly "circumscribed":

> In remanding the case, we do not intend to imply that the Workers are entitled to duplicative discovery. In fact, ***we anticipate that any permitted discovery will be quite limited***. Without attempting in any way to limit the district court's prerogative to supervise discovery, we would expect that the Workers would be required to identify very specifically that ***very small amount of information*** that they believe might exist and that Goodyear would be required to respond only to that ***limited discovery*** request.

Id. (emphasis added).

D. The *Aldridge V* decision.

Upon remand, Petitioners' co-counsel split as to the proper course of action, filing separate and inconsistent discovery motions, as if each co-counsel represented different parties. First, Mr. Sack, along with new counsel, Henry Eigles, Esq., argued that Petitioners should be permitted to start over again and seek full discovery from scratch, contrary to the Fourth Circuit's express instructions (as if *Heinrich*, *McClelland* and *Aldridge III-IV* had never happened). They asserted that the Fourth Circuit had erroneously limited the scope of discovery in *Aldridge IV* because Goodyear had fraudulently misrepresented the similarities between the *McClelland* and

Aldridge cases, and that the district court could therefore ignore the mandate of the Fourth Circuit.[10]

By contrast, Petitioners' co-counsel, G. Macy Nelson, Esq., who had briefed and argued *Aldridge I, II, III,* and *IV*, set out discrete information that Petitioners allegedly lacked. Mr. Nelson relied upon the prior Rule 56(f) affidavits, but he also raised entirely new areas, such as the defenses Goodyear intended to raise and other claims filed against Goodyear. (JA.II 271, 275-78). In response, Goodyear set forth all of the documents and other discovery materials produced in *Heinrich* and *McClelland* that responded to Mr. Nelson's requests[11] and explained in detail how this constituted all extant material information. (JA.II 1432-5862).[12]

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10. In a reply brief filed shortly before a scheduled hearing on October 25, 2000, Messrs. Eigles and Sack made a new accusation of alleged deception, claiming that in *Aldridge III* and *IV*, Goodyear had intentionally misrepresented the status and content of the *McClelland* summary judgment record. (JA.II 879-90).

11. Petitioners' complaint about these exhibits, that their "objective was to thwart petitioners' right to discovery" (Pet. at 12) is difficult to fathom. Pursuant to the Fourth Circuit's decision in *Aldridge IV*, Goodyear produced these responsive documents to prove that it had already produced (and thus were available to Petitioners) all pertinent information in response to their two post-remand motions for discovery. Given this production, Petitioners' complaint that Goodyear "had not identified the documents and information previously disclosed in the previous litigations" (Pet. at 12) is absurd. Goodyear produced these materials in the district court precisely to establish the record requested by the Fourth Circuit and thereby avoid such complaints by Petitioners that the materials had not been produced to them. In any event, Mr. Sack, as *Heinrich* counsel, has had them available all along.

12. Because many of these materials involved trade secrets and other confidential information, Goodyear moved for a protective order patterned after similar orders previously entered by the district court in *Heinrich* and *McClelland* regarding this information. Far from

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The district court carefully considered these responses in light of the Fourth Circuit's instructions in *Aldridge IV*. First, the court concluded that the Eigles/Sack motion sought to circumvent the Fourth Circuit's instructions and therefore violated the law of the case doctrine. (JA.II 1084-87). The court thus focused on Mr. Nelson's motion. *Id.*

After conducting an "exhaustive review" of the "thousands of pages of discovery materials" used by Petitioners in opposing Goodyear's motion for summary judgment," as well as the discovery materials provided by Goodyear, the district court concluded that Petitioners had already received all information that they reasonably needed to respond to the summary judgment motion. *Aldridge v. Goodyear Tire & Rubber Co.*, 198 F.R.D. 72, 81 (D. Md. 2000) ("*Aldridge V*") (Pet. App. 31-32).

For example, the court found that many discovery requests were procedurally improper because they sought duplicative discovery or were untimely (they were never presented to the court previously). (*Aldridge V*, Pet. App. 20-27). Much of the information had no relevance to the critical issue of causation. (*Id.* at 25-27).

The court analyzed the remaining requests in full. (*Id.* at 27-31).[13] For instance, while Petitioners had repeatedly

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prohibiting Petitioners from discovery of these documents as Petitioners assert (Pet. at 11), the protective order simply prohibited Petitioners from revealing Goodyear's trade secrets to the general public. It therefore did not prejudice Petitioners in any way, their lengthy complaint (Pet. at 11-12) notwithstanding.

13. The court reiterated that it had already received and reviewed "voluminous" evidentiary materials in deciding the summary judgment motion in Aldridge III. (Pet. App. 19). These included voluminous "documents, deposition excerpts and affidavits" attached to Goodyear's motion for summary judgment, as well as three "Master Exhibit Files"
(Cont'd)

stressed their need for information on synthetic rubber, the district court found that "[i]t is clear from the record here that detailed information relating to synthetic rubbers, as well as information relating to natural rubbers and reclaimed rubbers, has previously been produced by Goodyear and that all of this information was available to be analyzed by plaintiffs' experts." (*Id.* at 29). The court further determined that, for each individual plaintiff, Goodyear's data "disclos[ed] every chemical used in the Cumberland plant since 1936, including information disclosing the exact location where each chemical was used in the manufacturing process." *Id.* at 26.

(Cont'd)

filed by Petitioners with their twenty-one individual oppositions in 1997, which contained "voluminous documents produced in *Heinrich* and *McClelland*[.]" *Id.* at 16. These three volumes of exhibits included an eleven-page toxicology report, a 163-page listing of chemicals used by Kelly, a 100-page summary of chemicals used in the mill room, and an affidavit of a toxicologist [Dr. Donohue] discussing the properties of chemicals present in the Kelly plant. *Id.* The district court also examined the 4,138 pages of exhibits submitted with Petitioners' 299-page opposition brief filed in October 1998, which included: (1) one volume of plaintiffs' experts' reports; (2) one volume of experts' affidavits and medical histories; (3) thousands of pages of documents obtained during discovery in the *Heinrich* and *McClelland* cases; (4) affidavits and excerpts of plaintiffs' deposition testimony; (5) chemical exposure summaries for various plaintiffs, identifying chemicals that cause heart disease and chemicals that cause cancer; (6) documents that contain a breakdown of the various departments and locations in the Kelly plant where plaintiffs had worked and a listing of the chemicals to which each had been exposed in those locations; and (7) affidavits of numerous plaintiffs identifying chemicals to which they had been exposed and their health conditions. *Id.* at 18-19. Next, the district court examined Goodyear's nine loose-leaf volumes of exhibits (JA.II 1432-5862), which contained "thousands of pages of discovery materials previously produced in the *Heinrich* and *McClelland* litigations[,]" including "depositions of key Goodyear personnel, answers to interrogatories, mortality studies, purchase order sheets of Kelly-Springfield, records disclosing yearly shipments of chemicals from Goodyear to Kelly-Springfield, and yearly insurance company surveys of dust, vapors and airborne chemicals at the plant." (*Aldridge V*, Pet. App. at 25 n.5).

In sum, the district court carefully reviewed each category of relevant information that had been properly sought by Petitioners in their Rule 56(f) affidavits and concluded that all extant material information had already been made available to them through the *Heinrich* and *McClelland* discovery.

E. The *Aldridge VI* decision.

Remarkably, in appealing to the Fourth Circuit, Petitioners did not challenge the district court's ruling that they had received all extant material information. Instead, Petitioners' Fourth Circuit briefs argued that (1) Goodyear had made misrepresentations that lulled the district court and the Fourth Circuit into relying on the *McClelland* decision as a precedent, and (2) the district court violated the Fourth Circuit's remand instructions by failing to allow them full and unlimited non-duplicative discovery.

Even at oral argument, when asked point-blank to name specific discovery materials that still were needed, Petitioners' counsel could name only death certificates (which the district court had already rejected as unnecessary, as they list only the decedent's disease, not a chemical that may have caused the disease); mortality and epidemiology studies (which, to the extent material, had already been produced); health records (all of which Goodyear had produced to the extent they were extant), and a vague reference to documents showing the effect of chemicals—even though Goodyear had already produced all extant information on chemicals used, their "code" names, and their locations at the plant. (*See* 1/26/02 Tr. of *Aldridge VI* oral argument in Fourth Circuit, at pp. 11-15, 15-23).[14]

14. Petitioners' assertion that the representations of Goodyear's counsel at oral argument regarding discovery were further "misrepresentations" (Pet. at 13) typifies their odious hyperbole throughout this appeal. Instead of demonstrating an actual misstatement, Petitioners' tactic labels any comment that Petitioners do not like as a "fraud" and thereby avoids rebutting its substance.

Given this weak response, the Fourth Circuit's decision affirming the district court and adopting its analysis, *Aldridge v. Goodyear Tire & Rubber Co.*, No. 00-2588 (4th Cir. March 5, 2002) ("*Aldridge VI*") (Pet. App. 1) is hardly remarkable. Indeed, contrary to Petitioners' repeated assertion that the district court failed to follow the Fourth Circuit's limited mandate in *Aldridge IV*, the Fourth Circuit (with two of the same three panel members from *Aldridge II* and *IV*) *affirmed* the district court's decision in its entirety ("we affirm on the reasoning of the district court"), concluding that the district court "correctly decided the issues before it." (Pet. App. 8). That holding flies in the face of Petitioners' insistence that the district court disobeyed the Fourth Circuit's mandate.

Notably, the Fourth Circuit's decision did not find it necessary to address Petitioners' fervent accusations that Goodyear had defrauded the district court and the Fourth Circuit, having addressed that issue thoroughly at oral argument. (1/26/02 *Aldridge VI* oral argument Tr. at pp. 3-6) (pointing out that the fraud allegations, while serious, "lacked anything to back them up"). The Fourth Circuit similarly denied Petitioners' petition for rehearing and rehearing en banc, which had focused almost entirely on their allegation of a "systemic" fraud by Goodyear on the courts and the federal government. (Pet. App. at 78-79, 90-91). Thus, the very courts that Goodyear supposedly defrauded have dismissed the charges out of hand. Needless to say, Petitioners nowhere account for that rather telling fact.

DISCUSSION

Far worse than the mudslinging against Goodyear, Petitioners' conspiracy theories now extend to the district court itself.[15] In the Conclusion section of the petition, counsel level

15. Indeed, in subsequent proceedings in the Fourth Circuit (*e.g.*, a motion to recall the mandate in *Aldridge VI* and a motion in a related case for an outside "investigation" of Goodyear, Petitioners' (Cont'd)

outrageous and wholly unfounded charges against the district court: "In sum, the district court proceedings were deliberately unlawful." (Pet. at 18). Counsel go so far as to contend that the district court "was complicit" with Goodyear in denying discovery and foreclosing their claims and that certiorari is needed so they can litigate in a "fair and impartial forum." (*Id.*) With all due respect, these wild attacks on the district court go far beyond the pale of legitimate advocacy.

This Court is not the appropriate forum for such hollow histrionics, nor is it the place for the resolution of discovery disputes and application of basic summary judgment rules. Petitioners have had ample, if not overwhelming, opportunity to make their case to the lower courts, and they have abjectly failed. In *Aldridge IV*, the Fourth Circuit gave Petitioners one last opportunity to demonstrate what limited additional information they needed to respond to Goodyear's summary judgment motion, and Petitioners failed to take advantage upon remand, opting instead to bandy ludicrous charges of fraud as a smokescreen. That Goodyear has made arguments that Petitioners dislike does not mean that a fraud has occurred. That the lower courts have concluded that Petitioners have received all extant available information needed to respond to Goodyear's summary judgment motion does not mean that those courts are corrupt. Petitioners' incessant baseless accusations are improper and should not be condoned.

Even if taken at face value, Petitioners advance no basis for a grant of certiorari in this case.

(Cont'd)
counsel has also maligned the impartiality of the *Aldridge VI* panel, asking for recusal on the basis of partiality). The Fourth Circuit has denied each of those motions.

1. Petitioners' Discovery Issue Does Not Warrant Certiorari.

A. Petitioners mischaracterize the discovery issue decided by the Fourth Circuit.

As Petitioners would have it, the lower courts determined that Petitioners are not entitled to any discovery. The courts made no such decision. To the contrary, they concluded that (1) Petitioners were not entitled to pursue duplicative discovery replicating the exhaustive discovery that had already been conducted in the preceding *Heinrich* and *McClelland* cases; and (2) Petitioners had failed to demonstrate, pursuant to Rule 56(f), any additional discovery that would help Petitioners respond to Goodyear's summary judgment motion. Neither of the latter rulings constitutes an "abuse of the Federal Rules of Civil Procedure" or a denial of due process. (Pet. at i).

Lest there be any doubt, ample Circuit precedent is in accord with the lower courts' approach in this case. Numerous Circuit decisions have affirmed the district court's right to cut off discovery where the plaintiff cannot show that discovery could be reasonably expected to result in evidence sufficient to establish material disputes of fact that could defeat summary judgment. *See, e.g., Strag v. Board of Trustees*, 55 F.3d 943, 954 (4th Cir. 1995) (Rule 56(f) opposition should be denied if additional discovery could not create a genuine issue of fact sufficient to defeat summary judgment); *Becerra v. Asher*, 105 F.3d 1042, 1048 (5th Cir. 1997) (affirming summary judgment where plaintiff could not show how requested discovery would create a genuine issue of material fact); *Sierra Club v. Slater*, 120 F.3d 623, 638 (6th Cir. 1997) (non-movant must show that discovery would disclose material disputed facts); *DeVargas v. Mason & Hanger-Silas Mason Co.*, 911 F.2d 1377, 1393 (10th Cir. 1990) (further discovery unnecessary where claim was inadequate under substantive law); *Hancock*

Indus. v. Schaeffer, 811 F.2d 225 (3d Cir. 1987) (discovery denied where antitrust claim was clearly improper as a matter of law). The lower courts broke no new ground in this case.

As Professor Brunet states, "the mere fact that no discovery has been undertaken does not mean that courts should or will grant a Rule 56(f) motion." Edward Brunet, *The Timing of Summary Judgment*, 198 F.R.D. 679, 697 (2001). To the contrary, "caselaw has made it very clear that 'the fact that discovery is not complete—indeed, has not yet begun—need not defeat the motion.'" *Id.* at 680 (quoting *Chambers v. American Trans. Air, Inc.*, 17 F.3d 998, 1002 (7th Cir. 1994)).

As a rather pedestrian application of Rule 56(f) to a voluminous discovery record available from prior closely related cases, the Fourth Circuit's decision raises no issues warranting review by this Court.

B. Petitioners mischaracterize the nature of this case, asserting that they received no discovery, when in fact they received exhaustive discovery materials through the *Heinrich* and *McClelland* cases.

By emphasizing the fact that the lower courts did not allow new discovery, Petitioners distort and ignore the crucial fact that they had already received full discovery through the *Heinrich* and *McClelland* cases. Their Petition is conspicuously silent as to the scope or content of that discovery, and for good reason. As the district court concluded, the discovery was exhaustive, providing voluminous information about the Kelly plant, its operations, the chemicals that were present, and numerous other pertinent facts:

- 39 depositions of Kelly and Goodyear officials, including those individuals identified by the *Heinrich*, *McClelland*, and *Aldridge* plaintiffs as having material personal knowledge of plant operations and product information.

- Numerous epidemiological studies, including a five-year NIOSH study of Petitioners' workplace and three published studies by the University of North Carolina of Goodyear tire and rubber plants.

- All existing records of chemicals shipped by Goodyear to Kelly, both direct and indirect, including computer printouts listing the names of chemicals, shipping dates, weight of shipments, and total amount of the chemical shipped in that year, for a six-year period (1977-82).

- Lists and periods of use of all chemicals that were possibly used in the plant since 1936, based on both the Chemical Hazard and Toxicity (CHAT) system put into place in 1977 and review of all chemicals identified in laboratory test records and microfilmed manufacturing formulations.

(JA.II 817-33, 1138-55 (discussing JA.II 1157-1375, 5690-5725)). Numerous other categories of information were produced as well.

Petitioners' failure to acknowledge the truly massive scope of information already available to them flies in the face of their assertion that they received no discovery. The true questions before the Court, whether the district court abused its discretion in concluding that this information was sufficient, and whether the Fourth Circuit erred in affirming that decision, hardly constitute issues deserving of certiorari.

C. The lower courts' decisions involve routine application of settled principles that do not warrant review by this Court.

The discovery dispute in this case does satisfy any of the traditional bases for certiorari. There is no split among the circuits regarding interpretation or application of Rule 56(f). The district courts' requirement that Petitioners must utilize discovery from the prior litigation hardly falls outside the pale of the district courts' broad powers to superintend discovery. And the Petition abjectly fails to present any important issue of law requiring this Court's attention. Instead, the Petition asserts error in factual findings and misapplication of settled law to the facts. It scarcely needs to be said to this Court that any such error does not warrant certiorari. (Sup. Ct. R. 10).

2. Petitioners' fraud on the court charges do not warrant this Court's attention.

The myriad accusations by Petitioners against Goodyear have similar answers: no misrepresentations were made; the lower courts that supposedly were defrauded have failed to find any merit in these charges whatsoever; and in any event none of these accusations presents a significant unsettled legal question warranting this Court's review.

Without going into extensive detail, the fraud charges are easily rebutted.

Petitioners' first charge, that Goodyear committed "fraud" by arguing that the *Aldridge* cases were "virtually identical" to the *McClelland* cases, fails for three obvious reasons: *First*, Goodyear's description is patently correct, as the district court itself found in *Aldridge III* (Pet. App. 59) ("[the material facts here and in *McClelland* are virtually identical") and as Mr. Sack apparently conceded back in 1990, when he described

the cases as "related, and essentially similar." (JA.I 1300). *Second*, Goodyear's description in any event constitutes normal argument of counsel falling well within settled boundaries of advocacy. *See, e.g., Sacher v. United States*, 343 U.S. 1, 9 (1952) ("Of course, it is the right of counsel for every litigant to press his claim, even if it appears farfetched and untenable, to obtain the court's considered ruling. Full enjoyment of that right, with due allowance for the heat of controversy, will be protected by appellate courts"). *Third*, Petitioners waived this argument when they failed to assert it in *Aldridge III* or *IV*.

The second accusation, that Goodyear intentionally deceived the district court by concocting a strategy of keeping certain expert opinions set forth in answers to interrogatories out of the *McClelland* record and then, many years later, stating to the district court in *Aldridge III* that the discovery in that case was complete, is even more ludicrous. *First*, Goodyear's counsel's statement that the discovery in *McClelland* and *Heinrich* was complete, making the *Aldridge* case ripe for summary judgment (JA.I 7736), was entirely accurate.[16] *Second*, even under Petitioners' contorted interpretation, the statement

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16. Counsel simply stated that discovery in *Heinrich* and *McClelland* was completed, making the *Aldridge* case ripe for summary judgment based on that discovery:

> Your Honor, again, we are filing this motion pursuant to Rule 56 on the basis that the record in the McClelland case is complete. All the discovery in the case had been done, it was done primarily in the Heinrich litigation, the discovery was complete, and the case is now ripe for resolution similar to the way Judge Smalkin relied on the McClelland litigation in entering summary judgment in the Jewell case.

(JA.I 7736). Notwithstanding the clarity and accuracy of this argument, Petitioners contort it into an entirely different meaning, *i.e.*, that in *McClelland* the district court and the Fourth Circuit considered the complete discovery record that had been compiled by the parties.

is absolutely correct: the interrogatory answers in question *were* in fact made a part of the *McClelland* record.[17] *Finally*, Petitioners utterly failed to preserve the charge for review, raising it belatedly for the first time in a *reply* brief in *Aldridge V*, and never in *Aldridge III* or *IV* as required to preserve it for appellate review.

The basic fact remains: Petitioners could not persuade the very courts that were purportedly defrauded into taking these absurd charges seriously enough to address them in their decisions. Invoking *Hazel-Atlas* does not make up for the fact that Petitioners' fraud accusations are absolutely baseless.

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17. The evidence here is overwhelming. To cite just a few telling examples, plaintiffs' counsel in *McClelland I* filed objections to a magistrate's recommendations confirming that the interrogatory answers "were filed in open court" and then arguing their content at length, even offering a line-by-line analysis and appending some 33 pages of the most pertinent answers to their memorandum of law. (Gdyr.Add. 90, 132-34, 137,142-70). Goodyear similarly quoted and appended six additional pages of answers in response. (Gdyr.Add. 179-80, 185-90). The parties placed the full 272 pages of interrogatory answers in their Joint Appendix filed in the Fourth Circuit in *McClelland II*. (*McClelland II* Joint Appendix at 369-641). Both plaintiffs' counsel and Goodyear repeatedly confirmed in their *McClelland II* briefs that the interrogatory answers "were filed with the court" (plaintiffs' Br. at 8 n.2) and "are in the record" (Goodyear Br. at 15). Numerous other such statements were made as well, *e.g.*, plaintiffs' confirmation that the answers, "all of which are contained in the record of this case" (plaintiffs' Br. at 9), constituted sufficient evidence to defeat summary judgment. Goodyear collected enough similar statements made by the parties in the *McClelland* litigation to fill *six pages* of its *Aldridge VI* brief in the Fourth Circuit (pp.54-59).

Perhaps because this evidence from the *McClelland* briefs and Joint Appendix so flatly refuted Petitioners' accusation, Petitioners vehemently opposed its presentation to the Fourth Circuit in *Aldridge VI* via judicial notice, going so far as to accuse Goodyear of committing a "fresh fraud" by seeking and obtaining judicial notice by the Fourth Circuit of its own briefs and records in *McClelland II*.

At bottom, they constitute the worst kind of litigatory mudslinging, distorting perfectly proper and accurate legal arguments by counsel into a quagmire of purported misrepresentation and deception. This Court need not, and should not, be drawn into Petitioners' counsel's vendetta against Goodyear. It is difficult to imagine a less deserving ground for granting certiorari.

CONCLUSION

This case presents a routine and pedestrian application of well-developed principles of law that do not require the Court's attention. For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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